

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

LAWRENCE DUANE BALDWIN,)	CASE NO.: 5:08CV2750
)	
Petitioner,)	JUDGE JOHN ADAMS
)	
)	
MAGGIE BEIGHTLER, Warden,)	<u>ORDER AND DECISION</u>
)	
Respondent.)	
)	

This matter appears before the Court on objections to the Report and Recommendation of the Magistrate Judge filed by Petitioner Lawrence Baldwin. Upon due consideration, the Court overrules the objections and adopts the Report and recommended findings and conclusions of the Magistrate Judge and incorporates them herein. Therefore, it is ordered that the petition is hereby DISMISSED.

On August 14, 2009, Magistrate Judge Vecchiarelli issued her Report & Recommendation, finding no merit in the nine grounds for relief.¹ On August 24, 2009, Baldwin objected to the Report, asserting error in resolving his thirteenth and fourteenth grounds for relief. Baldwin's objections consist of legal argument on the merits of those two grounds for relief. However, the Report found that Baldwin had procedurally defaulted both these grounds for relief. Doc. 10 at 17. Baldwin has raised no objection to this conclusion by the Magistrate Judge. Accordingly,

¹ While listing 14 grounds for relief, Baldwin also asserted that he was not seeking relief under his eighth through twelfth grounds.

the Court adopts the Report's conclusion that grounds 13 and 14 have been procedurally defaulted. As such, this Court need not examine Baldwin's argument that he should have succeeded on the merits of those claims.

Out of an abundance of caution, the Court notes that Baldwin's objections would fail even if he had not procedurally defaulted the underlying claims. The Report accurately states that Baldwin's claim of a defective indictment (Ground 13) is not cognizable in federal habeas. *See Burrows v. Engle*, 545 F.2d 552, 553 (6th Cir. 1976) (citing *Knewel v. Egan*, 268 U.S. 442, 446 (1925)). Furthermore, the Report correctly determined that Baldwin's claim of sentence error (Ground 14) is harmless, even if error is assumed. Accordingly, Baldwin's objections have no merit.

Having found no merit to the objections raised by Petitioner, the Court ADOPTS the Magistrate Judge's Report in its entirety. The Petition is DISMISSED.

The Court certifies, pursuant to 28 U.S.C. § 1915(A)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis upon which to issue a certificate of appealability.

IT IS SO ORDERED.

August 26, 2009

/s/ John R. Adams
JUDGE JOHN R. ADAMS
UNITED STATES DISTRICT JUDGE